No. 1

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

FEMI BOGLE-ASSEGAI,
Petitioners,
v.
STATE OF CONNECTICUT, COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES, CYNTHIA WATTS-ELDER, LEANNE APPLETON, AND DONALD NEWTON
Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Second Circuit Court of Appeals committed reversible error when it ruled that a Plaintiff who, in a deferral state, files a charge of discrimination under Title VII of the Civil Rights Act of 1964 with the E.E.O.C. within 300 days of the alleged discriminating act, is prohibited from pursuing her claim in federal court when, unknown to Plaintiff, the E.E.O.C. may not have cross-filed the charge with the local deferral agency?

PARTIES TO THE PROCEEDING

Pursuant to Rule 14.1(b), the following list identifies all of the parties appearing here and before the United States Court of Appeals for the Second Circuit.

The petitioner here and appellant below is Femi Bogle-Assegai. She brings this action on her own behalf.

The appellees below and respondents here are State of Connecticut, Commission on Human Rights and Opportunities, Cynthia Watts-Elder, Leanne Appleton, and Donald Newton.

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this case.

OPINIONS BELOW

The opinion of the Second Circuit Court of Appeals (App. A) is reported at 470 F.3d 498 (2d Cir. 2006).

JURISDICTION

The judgment of the Court of Appeals was entered on November 29, 2006. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

1. Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5(e)(1) states:

> A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge including the date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

2. 29 C.F.R. § 1626.10 Agreements with State or local fair employment practices agencies.

(a) Pursuant to sections 6 and 7 of the ADEA and section 11(b) of the FLSA, the Commission may enter into agreements with State or local fair employment practices agencies to cooperate in enforcement, technical assistance, research, or public informational activities, and may engage the services of such agencies in processing charges assuring the safeguard of the Federal rights of aggrieved persons.

(b) The Commission may enter into agreements with State or local agencies which authorize such agencies to receive charges and complaints pursuant to § 1626.5 and in accordance with the specifications contained in §§ 1626.7 and 1626.8.

(c) When a worksharing agreement with a State agency is in effect, the State agency will act on certain charges and the Commission will promptly process charges which the State agency does not pursue. Charges received by one agency under the agreement shall be deemed received by the other agency for purposes of § 1626.7.

3. 42 U.S.C. § 2000e-8. Investigations

(b) Cooperation with State and local agencies administering State fair employment practices laws; participation in and contribution to research and other projects; utilization of services;

payment in advance or reimbursement; agreements and rescission of agreements.

The Commission may cooperate with State and local agencies charged with the administration of State fair employment practices laws and, with the consent of such agencies, may, for the purpose of carrying out its functions and duties under this subchapter and within the limitation of funds appropriated specifically for such purpose, engage in and contribute to the cost of research and other projects of mutual interest undertaken by such agencies, and utilize the services of such agencies and their employees, and, notwithstanding any other provision of law, pay by advance or reimbursement such agencies and their employees for services rendered to assist the Commission in carrying out this subchapter. In furtherance of such cooperative efforts, the Commission may enter into written agreements with such State or local agencies and such agreements may include provisions under which the Commission shall refrain from processing a charge in any cases or class of cases specified in such agreements or under which the Commission shall relieve any person or class of persons in such State or locality from requirements imposed under this section. The Commission shall rescind any such agreement whenever it determines that the agreement no longer serves the interest of effective enforcement of this subchapter.

STATEMENT OF THE CASE

This case presents questions about whether a recognized state deferral agency may disavow its work-sharing agreement with the Equal Employment Opportunity Commission without notice and to the detriment of employment discrimination complainants. This question has not been directly addressed by this Court but presents an issue of profound national importance. The interstices of this Court's decisions in *E.E.O.C. v. Commercial Office Products*, *Love v. Pullman Co.*, and *Zipes v. TWA*, lead to the conclusion that the statutory framework within which Title VII complaints are handled cannot be selectively manipulated to abrogate the rights of complainants.

I. FACTUAL BACKGROUND

The recitation of facts by the Court of Appeals fails to state that Bogle-Assegai would likely have prevailed on the merits because the operative facts supporting the claim were *admitted* by Defendants in their own pleadings.

Bogle-Assegai was hired as an investigator for the Connecticut Commission on Human Right and Opportunities, the state deferral agency charged with investigating and remedying complaints of employment discrimination. She was later promoted to the position of Regional Manager in 1997 by former agency Executive Director, Louis

Martin. A strong atmosphere of racial tension existed at the C.H.R.O. because of perceived or actual racial discrimination by Martin.

Defendant Cynthia Watts-Elder assumed the Executive Director position with the stated intention of "shaking up the agency", to make changes in management at C.H.R.O. from "top to bottom", and ending the "climate of racial tension within the agency and favoritism toward African-Americans in hiring and promoting". In their answer to the complaint, Defendants *admit these statements* by Watts-Elder. (SA-38, ¶ 20; SA-256, ¶¶ 19, 20)

Further, in answer to the complaint Defendants *admit* their belief that "plaintiff was promoted as part of a concerted effort by the then Executive Director to discriminate against white employees." (SA-255, ¶ 14). Finally, in answer to the complaint ¶ 27 Defendants *admit* that "commencing in October and November 2000 Defendant Watts-Elder, aided and abetted by Newton, the C.H.R.O. Chief of Field Operations, began a concerted effort of spying on Plaintiff, using Waterbury staffers and the building's swipe card records, to affirm and justify a claim of "stealing" state time. At least one representative of the Attorney General's office, being Attorney David Teed, was involved in this effort." (SA-257). Thus, taking these three *admissions* by Defendant, Plaintiff would likely have prevailed on the merits of her claim that the Defendants targeted Plaintiff as

a "Martin Hire" believed to have been discriminatorily promoted, and concocted a scheme as a pretext to discharge her.

Because she was employed as a Regional Manager for the Defendant, the state deferral agency, Bogle-Assegai was thoroughly familiar with the informal manner in which extensions of the work-sharing agreements between the E.E.O.C. and the C.H.R.O. were handled.

On October 1, 2001 Plaintiff filed her charge of discrimination with the E.E.O.C., 186 days after her notice of termination of employment. Bogle-Assegai did not file with the state deferral agency, C.H.R.O. Plaintiff chose to file directly with the E.E.O.C. because the deferral agency was her employer, alleged to have engaged in the discriminatory and retaliatory conduct. The E.E.O.C. accepted jurisdiction of the charge and issued a right to sue letter to Bogle-Assegai.

II. PROCEEDINGS BELOW

A. The District Court

On October 1, 2001 Bogle-Assegai filed an employment discrimination complaint against C.H.R.O. and several of its employees with the Equal Employment Opportunity Commission ("E.E.O.C.") pursuant to Title VII of the Civil Rights Act of 1964. In her complaint, Bogle-

Assegai alleged that she had been subjected to unlawful discrimination based upon her race, color, national origin and religion. A "no cause" finding was issued by the E.E.O.C. on September 17, 2002. The federal court action commenced on December 24, 2002. Defendants contended before the District Court, inter alia, that the matter should be dismissed upon summary judgment because the charge was not timely, not being filed within 180 days. On March 10, 2005 the District Court granted Defendants' motion for summary judgment.

B. The Court of Appeals

On appeal to the Second Circuit Court Bogle-Assegai requested that the Court take judicial notice of the work-sharing agreement between E.E.O.C. and C.H.R.O. that permitted dual filing. In response, Defendants contended for the first time that the work-sharing agreement had expired on October 1, 2001 when Bogle-Assegai filed her charge. In a three judge panel decision the Court of Appeals ruled that Bogle-Assegai had not filed a timely charge within 180 days, that there was insufficient evidence to support the existence of a work-sharing agreement at the time of her charge being filed, and that Bogle-Assegai had failed to explain why her arguments regarding the applicability of the work-sharing agreement had not been made at the district court level.

The Court of Appeals disagreed with Plaintiff's reliance upon 42 U.S.C. § 2000e-5, which provides for the 180-day filing period and the 300-day filing period in deferral states, as sufficient to raise the issue for all subsequent purposes. Rather, the Court held that "the mere citation to a statute that provides alternative filing periods, the applicability of each turning on whether the EEOC has or does not have a work- sharing agreement with the state agency, does not constitute an assertion that there in fact existed such an agreement at the pertinent time and that the longer period applies".

Further, the Court held that "Bogle-Assegai, in filing her administrative charge 186 days after her receipt of the Termination Letter, cannot be found to have relied on the existence of a work-sharing agreement".

Bogle-Assegai filed a request for a rehearing en banc on December 12, 2006. Her request for an en banc hearing was denied. This petition then followed.

III. THIS CASE PRESENTS ISSUES OF FUNDAMENTAL NATIONAL IMPORTANCE.

Although this case presents specific legal issues, it is fundamentally a case about whether the remedial purposes of Title VII may be thwarted by

state deferral agencies at the expense of employment discrimination complainants. The fundamental question is whether discrimination complainants may be penalized when, unknown to the public, there is an alleged lapse in the work-sharing agreement between the E.E.O.C. and a state deferral agency. This Court has previously said that Title VII of the Civil Rights Act of 1964 was intended to provide broad remedial relief to discrimination complainants. This proposition is tested in this case, where the decision of the Appeals Court has introduced a high level of instability into a regulatory scheme that is intended to be "user friendly".

IV. REASONS FOR GRANTING OF THE PETITION

A. The Court of Appeals Decision Undermines this Court's Decisions in E.E.O.C. v. Commercial Office Products, Love v. Pulliam, and Mohasco Corporation v. Silver.

Although this Court's decision in *E.E.O.C. v. Commercial Office Products*, 486 U.S. 107 (1988) did not decide the precise issue here presented, its reasoning provides significant guidance.

As part of the statutory and regulatory scheme that has been developed for enforcement of Title VII claims of discrimination, the E.E.O.C. has

been authorized to enter into work-sharing agreements with state and local fair employment practices agencies, also known as deferral agencies. 29 CFR §§ 1601.13(a)(4)(ii), 1626.10(c). As noted in *E.E.O.C. v. Commercial Office Products,* the E.E.O.C. has entered into such work-sharing agreements with approximately three-quarters of the 109 state and local agencies authorized to enforce state and local employment discrimination laws. This fact was found to be a matter of "substantial importance" to the matter of discrimination charge processing. Work-sharing agreements for the processing of discrimination complaints have become a fixed part of the statutory and regulatory framework for Title VII complaint processing. Once the statutory and regulatory framework is established by the E.E.O.C. entering into a work-sharing agreement with a state agency that is empowered to investigate and remedy discrimination claims, parties such as Bogle-Assegai come to rely upon the existence of this regulatory framework.

Because Connecticut has a fair employment practice law and has established a state agency that is empowered to act against unlawful employment practices, the C.H.R.O. qualifies as a state deferral or "706" agency. *See* Conn. Gen Stat. 46a-54 et seq; 29 C.F.R. §§ 1601.70, 1601.74, 1601.80 (1990). Thus, Connecticut is a "deferral" state, which gives a complainant the benefit of a 300-day filing period under Title VII.

The precise issue is whether, in a deferral state with a recognized 706 agency, an otherwise timely filed charge by a discrimination complainant can be defeated because of an alleged lapse in the work-sharing agreement where there has been no notice given to the public by the 706 agency or the EEOC of the alleged lapse.

Contrary to the rationale of the Second Circuit Court of Appeals, Bogle-Assegai reasonably relied upon the existence of the work-sharing agreement and the dual processing of charges by E.E.O.C. and the C.H.R.O. Bogle-Assegai was a Regional Manager for the state deferral agency, the C.H.R.O., and thus was well aware of the existence of the work-sharing agreement.

As this Court observed in *Love v. Pullman Co.*, 404 U.S. 522, 526 (1972): "To require a second filing by the aggrieved party . . . would serve no purpose other than the creation of an additional procedural technicality. Such technicalities are particularly inappropriate in a statutory scheme in which laymen, unassisted by trained lawyers, initiate the process." The rationale of the Second Circuit Court essentially would require discrimination complaints in Connecticut to file a second charge with the C.H.R.O. in the happenstance that there was some unknown and unannounced lapse in the work-sharing agreement. To require a discrimination complainant to protect herself against the E.E.O.C.'s possible violation of

its own regulations by simultaneously filing a charge with the appropriate state agency would be wholly inconsistent with the rationale of *Love v. Pullman*.

What the record in this case establishes is that discrimination complainants who timely file with the E.E.O.C. in a deferral state may nonetheless have their complaint dismissed when, unknown to any member of the public, that deferral agency suddenly discovers, or decides, that there was some momentary lapse in the work-sharing agreement. Some notice must necessarily be provided to the public before the established regulatory framework is dismantled in this manner.

The plain language of the regulations of E.E.O.C. also militate in favor of a finding that Bogle-Assegai's charge was timely filed. At 29 C.F.R. § 1601.13 (a) (4) (ii)(A) and (B) charges are deemed timely if filed within 300 days of the alleged violation. The plain language appears to relate solely to whether the fair employment practices agency has or has not waived its rights of exclusive processing of the charge.

In the instant case if the lapse in the written agreement indeed went unnoticed for at least two months, it is obvious that the parties to the agreement intended and continued to act for all material purposes as though the agreement continued. This is the very sort of "bureaucratic

error" cautioned against by the Second Circuit in *Ford v. Bernard Fineson*, 81 F. 3d 304, 312 (2nd Cir. 1996). Moreover, it is clear in the instant case that any cessation in the work-sharing agreement was technical and temporary. The deferral agency continued at all times to receive and to process charges. Even under general contract law, a contract may be found to exist where the parties to the agreement engage in a course of conduct that suggests an agreement. *Bisk v. Soko Co., Ltd.*, No. 98 CV-184, 2000 U.S. Dist. LEXIS 9798 *16 (N.D.N.Y. July 7, 2000). There is no record evidence that either E.E.O.C. or C.H.R.O. changed their course of dealings with each other during the dates leading up to or subsequent to Plaintiff's filing of her charge. At all times material, the two agencies continued to operate to the public as though the work-sharing agreement remained in effect. This Court has said that "[e]quity eschews mechanical rules; it depends upon flexibility." *Holmberg v. Armbrecht*, 327 U.S. 392, 396 (1946). The Court of Appeals has engaged in the mechanical application of the Title VII filing rules, without the required flexibility under these circumstances. This mechanical application creates a precedent that is harmful not only to Bogle-Assegai but to all discrimination complainants in deferral states.

"Work-sharing Agreements are much more like government regulations than any sort of contract, since they are agreements between

governmental agencies, are authorized by specific statutory provisions, and have been adopted by federal regulations as an integral part of the regulatory scheme. In a sense, they are localized subsets of federal regulations. In addition, these two-party "agreements" are principally intended to benefit third parties: the claimants who appear before the agencies....They therefore have the same impact on claimants as a statute or regulation." *Ford v. Bernard Fineson, Id.* at Footnote 5.

As noted by this Court in *EEOC v. Commercial Office Products*, the effect and operation of the work-sharing agreements is a question "of substantial importance because the EEOC has used its statutory authority to enter into work-sharing agreements with approximately three-quarters of the 109 state and local agencies authorized to enforce state and local employment discrimination laws." *Id* at 112

This Court has emphasized that Title VII is a "remedial scheme in which lay-persons rather than lawyers, are expected to initiate the process". *EEOC v. Commercial Office Products Id.* at 124. There is a recognized "need for predictability in a statutory scheme intended to be user-friendly." "It is already difficult enough to understand the deadlines for filing Title VII claims. Claimants who master the intricacies of these deadlines have the right to expect that they will not be penalized by

a bureaucrats noncompliance with the Work-sharing Agreement." *Ford v. Bernard Fineson, Id* at 312.

As noted by the Second Circuit Court of Appeals, "the timeliness of a claimant's filing . . . should not be made to depend on whether one or the other agency follows through on its undertakings under a Work-sharing Agreement". *Ford v. Bernard Fineson, Id* at 312. Making an individual's rights dependent upon such happenstance is not consistent with a document that is designed to promote efficiency and coordination. The work-sharing agreement that existed between the E.E.O.C. and C.H.R.O. at least as of September 30, 2001 and again by November 25, 2001 should not be read to require a discrimination complainant to second guess whether the agreement was in effective on October 1, 2001 when Bogle-Assegai filed her charge.

B. Even in the Absence of the Work-sharing Agreement, the E.E.O.C. was obligated to forward Bogle-Assegai's Charge when received to the C.H.R.O.

By filing Title VII charges with the E.E.O.C., Bogle-Assegai, as well as any other discrimination complainant, legally obligated the E.E.O.C. to transmit a copy of her charges to the state deferral agency, in this instance, the C.H.R.O. Title VII grants to state deferral agencies the exclusive right to process allegations of

discrimination occurring within that state for a period of sixty days. See 42 U.S.C. § 2000e-5(c). In order to comply with this statutory mandate, the E.E.O.C. has undertaken through *regulations* the duty to transmit a copy of all Connecticut Title VII charges to the C.H.R.O. See 29 C.F.R. § 1601.13(a) (3). The E.E.O.C. is required to send copies of charges to the C.H.R.O. even when the state deferral agency has waived its right to the period of exclusive processing. Under 29 C.F.R. § 1601.13 (a) (3) (iii), which governs work-sharing agreements, dual filing is not an option. Rather, it is a requirement.

Because the Supreme Court has held that the E.E.O.C. may initiate state proceedings on behalf of the discrimination complainant, see *Love v. Pullman Co., Id.* a complainant who files with the E.E.O.C. need not take any further action to ensure that her charges will be dual filed with the state deferral agency. The record reveals that at all times Connecticut was a deferral state; thus the 300-day filing period applied. By operation of the regulations, even in the absence of the work-sharing agreement, Bogle-Assegai's complaint must be deemed to have been forwarded to C.H.R.O. on October 1, 2001, the date it was received by E.E.O.C. Thus, Bogle-Assegai's complaint must be deemed to have been received by E.E.O.C. and C.H.R.O., well within the 300 days allowed by the regulations for deferral states.

No evidence exists that the E.E.O.C. failed to transmit Bogle-Assegai's charges. In the absence of such evidence, this Court must presume that the E.E.O.C. fulfilled its legal obligation. See *Atwood v. Kleberg*, 163 F.2d 108, 113 (5th Cir. 1947) ("it will be presumed that persons charged with the performance of a duty have discharged it fairly and in accordance with their commission until evidence is introduced which overthrows this presumption").

If the E.E.O.C. failed to forward the charge such failure should not prejudice Bogle-Assegai, who filed her charges with enough time for the E.E.O.C. to accomplish a timely state filing, and timely state consideration. The purpose of the statute is "to give state agencies a prior opportunity to consider discrimination complaints." *Love v. Pullman Co.*, *supra*, at 526. Since Plaintiff's charge was filed with the E.E.O.C. on day 186, the state agency had ample opportunity to consider the charge, and 60 days later the charge could have been considered by the E.E.O.C. In any event, any mistake in filing with the appropriate agency would have been due to the failure of E.E.O.C. to forward Bogle-Assegai's charge to the C.H.R.O. or to inform her that she was required to file directly with the C.H.R.O. herself. Had Bogle-Assegai known of the alleged lapse in the work-sharing agreement as of October 1, 2001 she could have immediately filed her charge directly with the C.H.R.O. and thus had a timely filing with both agencies within the 300 day filing period. In a

deferral state where there is no work-sharing agreement, a complainant need only file with the state deferral agency no later than day 240 after notice of the alleged violation. *Mohasco Corp. v. Silver*, 447 U.S. 807, 816, n. 16 (1980).

Furthermore, the E.E.O.C. issued to Plaintiff a right to sue letter. The E.E.O.C. would not have issued the letter if it did not have jurisdiction, or if it considered Plaintiff's charge to have been untimely.

C. The Court of Appeals Decision Undermines this Court's Decisions in *Zipes v. Trans World Airlines*, as the Doctrine of Equitable Tolling Should Have Been Applied To Find the Charge Timely Filed

Alternatively, the Court of Appeals should have applied the doctrine of equitable tolling in order to find Bogle-Assegai's charge timely filed. In *Zipes v. Trans World Airlines*, 455 U.S. 385 (1982) this Court held that "filing a timely charge of discrimination with the EEOC is not a jurisdictional prerequisite to suit in federal court, but a requirement that, like a statute of limitations, is subject to waiver, estoppel, and equitable tolling". By so finding, this Court stated its intent to "honor the remedial purpose of the legislation as a whole without negating the particular purpose of the filing requirement, to give prompt notice to the employer". *Id.* at 398. Since *Zipes v Trans World Airlines*, courts have consistently held that the charge-filing requirement, which is not a

jurisdictional prerequisite to suit, should be interpreted flexibly to achieve the statutory purposes.

To refuse to equitably toll the charge-filing period under the circumstances of the instant case unfairly punishes complainants seeking to file charges of discrimination and undermines the remedial purpose of Title VII.

All necessary elements for application of equitable tolling have been met in the instant case. Bogle-Assegai (1) acted with reasonable diligence during the time period she seeks to have tolled, and (2) has proved that the circumstances are so extraordinary that the doctrine should apply. *Smith v. McGinnis*, 208 F. 3d 13, 17 (2d Cir. 2000). The facts in the instant case are not the garden variety "excusable neglect" but rather demonstrate circumstances clearly beyond the ability of Bogle-Assegai to take appropriate action. The claim was filed on day 186 with the E.E.O.C. rather than the state deferral agency, *the employer alleged to have engaged in the discriminatory termination* of Bogle-Assegai. Plaintiff had no way of knowing that the E.E.O.C. might not comply with the statute and not forward the charge to the state agency.

Not only is this case a matter of individual concern to Bogle-Assegai but every discrimination complainant in a deferral state where there is a claim that the established regulatory framework has

been "dismantled" without prior notice to the public. Such complainants should be permitted to avail themselves of the doctrine of equitable tolling to avoid the dismissal of their charge when filed within the 300 day period. A refusal to allow the application of equitable tolling under these circumstances undermines the vitality of *Zipes v. Trans World Airlines*.

C.H.R.O. has pointed to no prejudice it suffered, nor to any bad faith or lack of due diligence on the part of the Bogle-Assegai, except for the fact that she did not file a separate and simultaneous charge with the C.H.R.O. raising the exact same allegations as the E.E.O.C. complaint. The only fault in this case rests with the governmental agencies, i.e. E.E.O.C. and the C.H.R.O., which may not have taken the steps necessary to ensure that cooperation among a deferral state and the E.E.O.C. occurred so as not to prejudice the rights of a charging party. Equitable tolling is therefore appropriate. To refuse to apply equitable tolling under these circumstances would require discrimination complainants to double-check the relationship between the state deferral agency and the E.E.O.C. and would in effect require the complainant to file with the state agency, when no such requirement statutorily exists. Moreover, it is not clear how discrimination complainants would ever be able to obtain such information regarding the status of any work-sharing agreement. Therefore, the Second Circuit Court of Appeals

decision effectively renders the 300 day period for filing, available to complainants in all other deferral states, unavailable to complainants in Connecticut.

While tolling would not prejudice the C.H.R.O., it would be grossly unfair to Bogle-Assegai and similarly situated complainants. Indeed it would be fundamentally unjust to refuse to equitably toll the charge-filing period where two agencies charged with enforcing Title VII may have acted in a way to deprive discrimination complainants of any means of remedying the agency's alleged deprivation of civil rights.

In *Love* v. *Pullman Co., Id.* this Court announced a guiding principle for construing the provisions of Title VII. This Court declined to read literally a filing provision of Title VII and explained that a technical reading would be "particularly inappropriate in a statutory scheme in which laymen, unassisted by trained lawyers, initiate the process." *Love v. Pullman Co., Id* at 527. Further, in *Zipes* the Court looked to the remedial purposes of Title VII, stating "we honor the remedial purpose of the legislation as a whole without negating the particular purpose of the filing requirement, to give prompt notice to the employer." *Zipes, Id.* at 398.

D. The Court of Appeals Decision Works To Manifest Injustices, Contrary To This Court's Decision In *Singleton v. Bureau of Medical Services*

Even though the applicability of the 300 day rule was not argued at the District Court level, the Court of Appeals has discretion to consider arguments where, *inter alia*, "injustice might otherwise result." *Singleton v. Bureau of Medical Services*, 428 U.S. 106, 121 (1976), quoting *Hormel v. Helvering*, 312 U.S. 552, 557 n. 8 (1941). The existence of the 300 day rule and the status of C.H.R.O. as a deferral agency with a work-sharing agreement with the E.E.O.C. were so clear that it was deemed to be a non sequitur that the state agency would ever deny the applicability of the work-sharing agreement. To prohibit a complainant from proceeding with a lawsuit when the complainant has timely filed her charge with the E.E.O.C. and received a right to sue letter; because the E.E.O.C. may not have cross-filed with the deferral agency works a manifest injustice.

Circuit Courts have found with regard to the self-executing nature of waivers found in work-sharing agreement that strict compliance with the referral provisions of the work-sharing agreement would be to exalt form over substance and preclude relief to a potentially meritorious claim simply because it was the victim of a bureaucratic mix-up. *E.E.O.C. v. Techalloy Maryland, Inc.*, 894 F.2d 676, 679 (4th Cir. 1990).

"Prohibiting any remedy to claimants who file discrimination complaints with an appropriate state or federal agency within the 300-day deadline is entirely at odds with the purpose of the work-

sharing agreement and with Title VII. These agreements are intended to eliminate duplication of effort between the agencies and to provide an efficient procedure for claimants to seek redress for their grievances". *Laquaglia v. Rio Hotel & Casino, Inc.*, 186 F.3d 1172, 1177 (9th Cir. 1999)

It is particularly egregious for the 706 state agency to claim the expiration of the work-sharing agreement when *it is the employer charged with discriminatory employment practices.*

The harm flowing from the Court of Appeals decisions is not limited to Bogle-Assegai alone. The decision has introduced a serious level of instability into the remedial, equitable and regulatory framework of Title VII charge processing for all potential discrimination complainants. The threatened instability is one that discrimination complainants in deferral states cannot overcome because there is no effective way of ascertaining when a work-sharing agreement is in effect. Finally, to allow the addition of such a procedural hurdle for laypersons undermines the decisions of this Court in *E.E.O.C. v. Commercial Office Products.* Leaving the Second Circuit's decision intact sends the wrong message that state deferral agencies that partner with the E.E.O.C. to investigate and remedy discrimination may play fast and loose with procedural rules when they choose to do so.

Denying review would erode public perception of the efficacy of the statutory and regulatory framework as a vehicle for assisting complainants obtain redress of their discrimination claims. The broad remedial purposes of Title VII should not be thwarted particularly by the very fair employment practices agency designated for redress of discrimination.

CONCLUSION

For the foregoing reasons, Femi Bogle-Assegai respectfully requests the Court to grant her petition for certiorari.

Respectfully Submitted,

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